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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LOCATION BASED SERVICES, LLC,
Plaintiff,

v.

NIANTIC, INC.,
Defendant.

Case No. 5:17-cv-04413-NC

**DEFENDANT NIANTIC, INC.'S
NOTICE OF MOTION AND
MOTION TO DISMISS FOR
FAILURE TO STATE A CLAIM
PURSUANT TO FED. R. CIV. P.
12(b)(6)**

Date: November 1, 2017
Time: 1:00 PM
Courtroom: 7, 4th Floor
Judge: Honorable Nathanael Cousins

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NOTICE OF MOTION

PLEASE TAKE NOTICE that on November 1, 2017, at 1:00, or as soon thereafter as the matter may be heard, before the Honorable Nathanael Cousins, Magistrate Judge of the United States District Court for the Northern District of California, Defendant Niantic, Inc. (“Niantic”) will present its Motion to Dismiss for Failure to State a Claim pursuant to Federal Rule of Civil Procedure 12(b)(6).

Niantic respectfully moves the Court to dismiss this litigation with prejudice. As set forth more fully in the accompanying Memorandum of Points and Authorities, the patents asserted by Plaintiff Location Based Services, LLC. (“LBS”) are invalid under 35 U.S.C. § 101 (“§ 101”) because they claim patent-ineligible subject matter. Niantic’s Motion is based on the accompanying Memorandum of Points and Authorities, LBS’s Amended Complaint, other material which may properly come before the Court at or before the hearing on this Motion, and any oral argument the Court deems appropriate.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

LBS’s four Asserted Patents¹ are directed to nothing more than the ancient and abstract idea of displaying information about locations on a map and, accordingly, are unpatentable under binding Supreme Court and Federal Circuit precedent. The landmark Supreme Court decision in *Alice Corp. Pty. Ltd. v. CLS Bank Int’l* held that patents are invalid under § 101 if they (1) are directed to an abstract idea and (2) do not transform the nature of the claim with an inventive concept. 134 S. Ct. 2347 (2014). LBS’s Asserted Patents are invalid under both steps.

LBS’s Asserted Patents are invalid under step 1 of the *Alice* framework because they claim the abstract idea of displaying information about locations on a map, which is unpatentable subject matter under § 101. The methods claimed by the Asserted Patents could be—and have been—performed with pen and paper for hundreds, if not thousands, of years.

¹ LBS asserts infringement of four patents: U.S. Patent Nos. 7,860,648 (“the ’648 Patent”); 8,392,114 (“the ’114 Patent”); 8,768,610 (“the ’610 Patent”); and 7,522,996 (“the ’996 Patent”) (collectively, the “Asserted Patents”). ECF 30, Amended Complaint.

1 The Asserted Patents are likewise invalid under step 2 of the *Alice* framework because
2 they do not disclose any inventive concepts; rather, they generically describe implementing the
3 abstract idea of displaying information about locations on a map on a generic computer system
4 using generic computer functionality. Since the *Alice* decision, courts have consistently ruled that
5 claiming the implementation of an abstract idea on a generic computer system is not inventive
6 and is insufficient to transform an abstract idea into patentable subject matter.

7 **II. FACTUAL BACKGROUND**

8 **A. Procedural Background**

9 Niantic is a software development company that focuses on augmented reality mobile
10 games—games that are played on users’ mobile phones based on the users’ location and activity
11 in the real world. Niantic is best known for developing the Pokémon GO game. In Pokémon GO,
12 players find and catch creatures—the titular Pokémon—by walking around the real world, which
13 moves their in-game avatar. The game software displays a Map View showing the area around
14 the player, as well as Pokémon that the player can try to catch. The Map View also displays other
15 locations, such as PokéStops, where the player can collect digital, in-game items, and Pokémon
16 gyms, where the player can battle the Pokémon of rival teams through the game software.

17 LBS filed this litigation on May 9, 2017 in the Eastern District of Texas, originally
18 alleging that Niantic infringes certain claims of the ’996 Patent. ECF 1. On a joint motion, the
19 case was transferred to the Northern District of California and was docketed in this District on
20 August 8, 2017.

21 On August 20, 2017, LBS filed the Amended Complaint at issue in this Motion. ECF 30.
22 The Amended Complaint continues to assert the ’996 Patent and also asserts infringement of the
23 ’648 Patent, the ’114 Patent, and the ’610 Patent.

24 LBS alleges that Pokémon GO infringes the Asserted Patents because Pokémon GO
25 displays information about locations in the game world, such as PokéStops and Pokémon gyms,
26 on a map. *E.g.*, ECF 30 ¶¶ 10, 28, 93.

B. Summary of the Asserted Patents and Claims

The Asserted Patents are all titled “Map Display System and Method” and are directed to “a computer system and methods related to a map display.” See ’996, ’114, ’648, ’610 Patents at Abstract. All four patents share a common specification, identify the same named inventors, and were previously assigned to The Invention Science Fund I, LLC, a subsidiary of the patent licensing company Intellectual Ventures. LBS apparently acquired some rights to the Asserted Patents in December 2016, and soon thereafter began asserting them in litigation.

LBS’s amended complaint asserts the following claims from each of the Asserted Patents (independent claims are bolded and in a larger font) (ECF 30 ¶¶ 27, 41, 50, 60, 69, 83, 92):

Patent No.	Asserted Method Claims	Asserted Apparatus Claims
7,522,996	1 , 2, 3, 5, 7, 8, 9, 12, 15,	19 , 22, 23, 24, 25, 28
7,860,648	1 , 2, 3, 4, 6, 7,	9 , 11, 13, 14, 15
8,392,114	1 , 4, 5, 6, 7, 13, 17	
8,768,610		1 ² , 5, 7 , 8 , 9, 10, 11, 13, 14, 18, 21, 26

The asserted independent method claim of the ’996 Patent discloses a method for *providing* map-related data that comprises:

- “receiving a request for a map display illustrating information relative to one or more locations”;
- “determining a status associated with at least one of the locations on the map display, the status being a function of one or more location interaction rules associated with at least one of the locations”;
- “generating a signal” to indicate that status on the “map display.”

’996 Patent, Claim 1. LBS also asserts independent claim 19 of the ’996 Patent. Claim 19 is an apparatus claim that recites a “computer program product” that contains instructions for performing the steps described in claim 1.

The asserted independent method claims of the ’114 and ’648 Patents are analogous to claim 1 of the ’996 Patent but recite a method for *receiving* the map on a display device

² LBS does not assert independent claim 1 of the ’610 Patent. But LBS does assert claim 5 of that patent, which depends from claim 1.

1 comprising:

- 2 • “transmitting a request for the map including one or more locations”
- 3 • “receiving the map” in which at least one of the locations is “associated with one
- 4 or more location interaction rules”
- 5 • “interacting” with a monitoring device to alter the map on the display device “as a
- 6 function of the location interaction rules” and, in the case of the ’114 Patent, “user
- 7 interaction rules.”

8 ’114 Patent, Claim 1, and ’648 Patent, Claim 1. LBS also asserts independent claim 9 of the ’648
 9 Patent. As with claim 19 of the ’996 Patent, claim 9 is simply an apparatus claim that recites a
 10 “computer program product” that performs the method of claim 1.

11 The ’610 Patent discloses only system or apparatus claims, all of which are analogous to
 12 the method claims in the ’996, ’114, and ’648 Patents. Claim 1 of the ’610 Patent, which is not
 13 asserted but is the parent claim for asserted claim 5, is similar to claim 1 of the ’996 Patent.
 14 Claim 1 of the ’610 Patent recites a “computer system” comprising a “data store” holding
 15 “interaction rules” and a “status module” that determines “a status” associated with a location
 16 based on “location interaction rules.” Claims 7 and 8 of the ’610 Patent mirror the independent
 17 method claims of the ’114 and ’648 Patents, but they are drafted in the form of a “system”
 18 containing “circuitry” for performing the steps recited in those method claims.

19 C. Related Litigation

20 This case is one of several past and pending suits involving the Asserted Patents. Since
 21 February 2017, LBS has filed patent infringement complaints, mostly in the Eastern District of
 22 Texas, against manufacturers of GPS devices and navigation software, such as Garmin, Rand
 23 McNally, Trimble, and MITAC, and against telecommunications companies, such as Sprint,
 24 Verizon, and AT&T.³ In each of these suits, LBS has asserted one or more of the Asserted

25 ³ LBS filed most of its patent infringement suits in the Eastern District of Texas, including:
 26 *Location Based Services, LLC v. Garmin International, Inc.*, 2:17-cv-00133-JRG-RSP; *Location*
 27 *Based Services, LLC v. MITAC Digital Corp.*, 2:17-cv-00134-JRG-RSP; *Location Based*
 28 *Services, LLC v. RM Acquisition, LLC d/b/a Rand McNally*, 2:17-cv-00135-JRG-RSP; *Location*
Based Services, LLC v. Trimble Inc., 2:17-cv-00410-JRG-RSP; *Location Based Services, LLC v.*
Sprint Spectrum L.P., 2:17-cv-00567-JRG; *Location Based Services, LLC v. AT&T Mobility LLC*,

1 Patents.

2 **III. APPLICABLE LAW**

3 A court may dismiss a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) for
4 failure to state a claim if the complaint lacks a cognizable legal theory, or if the complaint pleads
5 insufficient facts under a cognizable legal theory. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555
6 (2007); *see also Twilio, Inc. v. Telesign Corp.*, No. 16-CV-06925-LHK, 2017 WL 1374759, at *6
7 (N.D. Cal. Apr. 17, 2017).

8 In *Alice*, the Supreme Court adopted a two-step framework for determining whether a
9 claim is patent-ineligible and therefore invalid under § 101: (1) the first step of the *Alice* inquiry
10 is to determine if the claims are directed to one of the three patent-ineligible categories, *i.e.* laws
11 of nature, natural phenomena, or an abstract idea, and (2) if so, then step two of the *Alice* inquiry
12 is to determine whether any claim elements provide an “inventive concept” that transforms the
13 nature of the claim into patent-eligible subject matter. 134 S. Ct. at 2355. The mere recitation of
14 a generic computer implementation of an abstract idea does not qualify as an “inventive concept”
15 in the *Alice* frame work. The Federal Circuit has “repeatedly held” that the invocation of “off-
16 the-shelf, conventional computer, network, and display technology” is “not even arguably
17 inventive.” *Elec. Power Grp., LLC v. Alstom S.A.*, 830 F.3d 1350, 1354 (Fed. Cir. 2016). A
18 patent is therefore invalid if it is directed to an abstract idea, fails to disclose any “inventive
19 concept,” and merely claims implementing the abstract idea through a generic computer system.

20 “Whether a claim is drawn to patent-eligible subject matter under § 101 is a threshold
21 inquiry” and “an issue of law.” *In re Bilski*, 545 F.3d 943, 951 (Fed. Cir. 2008), *aff’d*, *Bilski v.*
22 *Kappos*, 130 S. Ct. 3218, 3225 (U.S. 2010). Therefore, patentability under § 101 is suitable for
23 early resolution through a Rule 12 motion to dismiss when the claims are plainly directed to an
24 abstract idea. *See, e.g., FairWarning IP, LLC v. Iatric Sys., Inc.*, 839 F.3d 1089, 1097-98 (Fed.
25 Cir. 2016); *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1344-45 (Fed. Cir.

26 _____
27 2:17-cv-00569-JRG; and *Location Based Services, LLC v. Cellco Partnership d/b/a Verizon*
28 *Wireless*, 2:17-cv-00573-JRG. LBS’s suit against Garmin was transferred to the Central District
of California, Case No. 2:17-cv-05755. LBS dismissed its first litigation against Rand McNally
and recently filed a new case in the Northern District of Illinois, Case No. 1:17-cv-6610.

2015). Courts in this district frequently find patents invalid under § 101 pursuant to Rule 12(b)(6) motions to dismiss. *See, e.g., Twilio*, 2017 WL 1374759, at *6; *Open Text S.A. v. Alfresco Software Ltd.*, No. 3:13-cv-04843-JD, 2014 WL 4684429, at *1 (N.D. Cal. Sept. 19, 2014); *Cardpool, Inc. v. Plastic Jungle, Inc.*, No. C 12-cv-01482-WHA, 2013 WL 245026, at *1 (N.D. Cal. Jan. 22, 2013).

IV. ARGUMENT

A. The Asserted Patents Are Directed to the Abstract Idea of Displaying Information About Locations on A Map

The first step of the *Alice* test “look[s] at the ‘focus’ of the claims and their ‘character as a whole’ to determine whether the claims are ‘drawn to the concept of’ an abstract idea.” *Content Aggregation Solutions LLC v. Blu Prods., Inc.*, No. 3:16-cv-00527-BEN-KSC, 2016 WL 6995490, at *3 (S.D. Cal. Nov. 29, 2016). To obtain a “full understanding of the basic character of the claimed subject matter,” courts may consider what the specification describes as the claimed invention’s “innovation over the prior art” and its “most important aspect.” *Internet Patents Corp. v. Active Network, Inc.*, 790 F.3d 1343, 1348 (Fed. Cir. 2015).

Here, the claims and specification demonstrate that the “basic character” of the Asserted Patents is the display of information about locations on a map. The “Technical Field” section of the Asserted Patents’ shared specification does not even attempt to identify any specific field to which the claimed invention relates, instead reciting only that “[t]he present application relates generally to maps.” *E.g.*, ’996 Patent at 1:5. And the specification then acknowledges that a general purpose computer is an exemplary system for implementing the embodiments described in the specification. *Id.* at 2:62-65.

The Asserted Patents’ basic character of displaying information about locations on a map is an abstract idea. Courts routinely reject as abstract claims relating to analysis and display of information. The Federal Circuit has explained that “we have treated analyzing information by steps people go through in their minds, or by mathematical algorithms, without more, as essentially mental processes within the abstract-idea category. And we have recognized that merely presenting the results of abstract processes of collecting and analyzing information,

without more (such as identifying a particular tool for presentation) is abstract as an ancillary part of such collection and analysis.” *Elec. Power Grp.*, 830 F.3d at 1354 (collecting cases; omitting citations).

Further, the shared specification of the Asserted Patents does not even attempt to offer any discussion of the claimed invention’s “innovation over the prior art” or “most important aspect.” Typically, a patent specification contains a “Background of the Invention” section that describes existing technology (i.e., the prior art) and its shortcomings. The specification then usually describes the claimed invention and its benefits over the existing technology. The Asserted Patents, in contrast, fail to describe either the prior art or any putative innovation over the prior art offered by the claimed invention. The Asserted Patents also fail to describe any alleged important aspect of the claimed invention. Indeed, the word “invention” appears only twice in the specifications of the Asserted Patents, in a boilerplate paragraph at the very end of the specification that provides no information about the claimed invention or why it is important or innovative. *See* ’996 Patent at 16:27-17:13.

1. **The Asserted Independent Claims of the ’996 Patent Are Abstract**

LBS asserts two independent claims from the ’996 Patent, claims 1 and 19. Claim 1 is representative:

1. A method for providing map-related data, the method comprising:

[a] receiving a request for a map display illustrating information relative to one or more locations in a predetermined area;

[b] determining a status associated with at least one of the locations on the map display, the status being a function of one or more location interaction rules associated with at least one of the locations on the map display; and

[c] generating a signal to indicate on the map display the status regarding a permitted traverse or visit that is allowed under an applicable location interaction rule associated with the at least one of the locations on the map display.

’996 Patent, Claim 1.

This claim language demonstrates that the steps of Claim 1 are directed to nothing more than the abstract idea of “indicating” (i.e., displaying) the “status” (i.e., information) about

1 locations on a map. Specifically, claim 1 recites determining a “status” associated with a location
 2 on the map, where the “status” is a function of a “location interaction rule” and relates to “a
 3 permitted traverse or visit” and then “indicating” that status on the map. The “status” associated
 4 with a location is simply information about the location. While the claim states that the “status”
 5 is a function of “one or more location interaction rules,” the “location interaction rules” are not
 6 defined or limited by the claims or specification in any way. The specification provides, for
 7 example, that “interaction rules can mean rules for interacting, either rules attached to a location
 8 or rules attached to a user.” ’996 Patent at 7:51-53.

9 If there were any doubt, examining the dependent claims of the ’996 Patent confirms that
 10 the claimed “status” can be essentially any information about the location. Claim 15 recites that
 11 the “status” can be a “progress indication.” Claim 16 recites that the “status” can be an indication
 12 of the location the user is to visit next. Claim 17 recites that the “status” can be traffic conditions.

13 Moreover, LBS’s allegations demonstrate that LBS reads the claimed location “status” as
 14 capable of being any type of information about the location. In this case, LBS asserts claim 1
 15 against Pokémon GO and alleges that the displayed “status” is any type of information about
 16 locations displayed by the game, including “gym affiliation,” “level,” or “Pokémon presence.”
 17 ECF 30 ¶ 93. LBS has also asserted claim 1 of the ’996 Patent against companies that provide
 18 navigation software, such as Rand McNally. In its suit against Rand McNally, LBS asserts that
 19 the claimed “status” includes “traffic status,” “accidents,” “whether or not the road is open or
 20 closed,” and “the type of road such as toll or free.” *Location Based Services, LLC. v. RM*
 21 *Acquisition, LLC d/b/a Rand McNally* (N.D. Ill. No. 1:12-cv-6610) (“*LBS v. Rand McNally*”),
 22 ECF 1 ¶ 127. Thus, by LBS’s reading of these claims, the claimed “status” of a location on the
 23 map is simply any type of information about the location.

24 The recitation of “rules” is merely a consequence of applying the claimed basic human
 25 activity to computer technology. “Rules” can refer to essentially any type of analysis performed
 26 by a computer. Using undefined “rules” to determine the “status” of a location is thus technical
 27 jargon for claiming the idea of analyzing information about a location. As the Federal Circuit has
 28 held, however, claims directed to “analyzing information by steps people go through in their

1 minds” are patent-ineligible because they are “essentially mental processes within the abstract-
 2 idea category.” *Elec. Power Grp.*, 830 F.3d at 1354. A human could just as easily apply “rules”
 3 in his or her head to determine the “status” of a location. Just as in *Electric Power Group*, the
 4 claims here are directed to “analyzing information” (here, using rules) and “displaying the
 5 results” (here, on a map) and accordingly are directed to an abstract idea. *Id.* Because Claim 1 is
 6 directed to nothing more than the abstract idea of displaying these “statuses” on a map, it is
 7 abstract under step one of the *Alice* framework.

8 The Federal Circuit’s analogous decision in *Intellectual Ventures I LLC v. Symantec Corp.*
 9 strongly supports this conclusion. 838 F.3d 1307 (Fed. Cir. 2016) (“*Symantec*”). There, the
 10 Federal Circuit considered a method claim that is remarkably similar to claim 1 of the ’996
 11 Patent. The claim at issue in *Symantec* also comprised three method steps:

12 A method for identifying characteristics of data files, comprising:

13 [a] receiving, on a processing system, file content identifiers for
 14 data files from a plurality of file content identifier generator agents,
 15 each agent provided on a source system and creating file content
 16 IDs using a mathematical algorithm, via a network;

16 [b] determining, on the processing system, whether each received
 content identifier matches a characteristic of other identifiers; and

17 [c] outputting, to at least one of the source systems responsive to a
 18 request from said source system, an indication of the characteristic
 of the data file based on said step of determining.

19 *Id.* at 1313. Each step of the *Symantec* claim corresponds to the similarly labeled step in claim 1
 20 of the ’996 Patent. Step [a] of both recites “receiving” information or a request for information.
 21 Step [b] of both recites “determining” some information. And step [c] of both recites
 22 “outputting” or “generating a signal to indicate” the result of the “determining” step. The Federal
 23 Circuit explained that “[c]haracterizing email based on a known list of identifiers” is abstract and
 24 that the “patent merely applies a well-known idea using generic computers to the particular
 25 technological environment of the Internet,” and the court accordingly held the claim at issue in
 26 *Symantec* to be abstract. *Id.* at 1314. Applying this logic, claim 1 of the ’996 Patent must also be
 27 abstract. It merely applies the well-known idea of displaying information on a map to a
 28 technological environment using steps that parallel the steps at issue in *Symantec*.

1 In *Move, Inc. v. Real Estate Alliance, Ltd.*, a district court invalidated as abstract another
 2 patent similar to the '996 Patent. 221 F. Supp. 3d 1149, 1162 (C.D. Cal. 2016). The claim at
 3 issue there recited a number of steps, the last three of which are listed here:⁴

4 [a] selecting a second area having boundaries within the zoomed
 5 first area

6 [b] identifying available real estate properties within the database
 7 which are located within the second area

8 [c] displaying the second area and a plurality of points within the
 9 second area, each point representing the appropriate geographic
 10 location of an available real estate property

11 *Id.* at 1154. Again, these three steps all correspond to the similarly labeled steps of claim 1 of the
 12 '996 Patent. Step [a] of both recites “receiving” a request for a map of an area or “selecting” an
 13 area. Step [b] of both recites determining a status associated with a location; the *Move, Inc.*
 14 patent determines whether the location is available for sale. And step [c] of both recites
 15 displaying that status on a map. The *Move, Inc.* court found the patent was directed to the
 16 abstract idea of “collecting and organizing information about available real estate properties and
 17 displaying this information on a digital map.” The '996 Patent is even more abstract; while the
 18 *Move, Inc.* patent was limited to information regarding available real estate properties, the '996
 19 Patent more broadly relates to displaying almost any information on a map.

20 Numerous other courts have also invalidated patents related to displaying information
 21 about locations on a map as patent-ineligible under *Alice*. One court described displaying
 22 information about locations on a map to be a “well-understood, routine, conventional activity”
 23 and found the patent at issue to be directed to an abstract idea. *Peschke Map Techs. LLC v. Rouse*
 24 *Props. Inc.*, 168 F. Supp. 3d 881, 889 (E.D. Va. 2016) (quoting *Mayo Collaborative Servs. v.*
 25 *Prometheus Labs., Inc.*, 566 U.S. 66, 73 (2012)); see also *Encyclopaedia Britannica, Inc. v.*
 26 *Dickstein Shapiro LLP*, 128 F. Supp. 3d 103, 112 (D.D.C. 2015) *aff'd* 653 F. App'x 764 (D.C.
 27 Cir. 2016) (steps of patent are “essentially variations of activities humans have performed for

28 ⁴ For clarity, the steps are provided out of order here. In the *Move, Inc.* patent, step [c] comes
 before step [b]. But this revised ordering is more logical: step [b] is a precursor to step [c],
 because the available real estate properties cannot be displayed in step [c] before they are
 identified in step [b].

thousands of years using paper maps and other reference works, and are thus abstract ideas”); *Concaten, Inc. v. Ameritrack Fleet Solutions, LLC*, 131 F.Supp.3d 1166, 1174 (D. Colo. 2015) *aff’d* 669 F. App’x 571 (Fed. Cir. 2016) (claims describing “the idea of receiving information from snow plows, processing the information, and sending an ‘operator instruction’ and a map back to the snow plow operator” were directed to an abstract idea).

The pen-and-paper test further confirms the abstract nature of claim 1 of the ’996 Patent. But for the rote recitation of generic computer-age terms, this claim recites an abstract idea that has been performed with pen and paper since time immemorial. *See OpenTV, Inc. v. Apple Inc.*, No. 14-cv-01622-HSG, 2015 WL 1535328, at *4 (N.D. Cal. Apr. 6, 2015) (“[t]he ‘pen and paper test’ confirms that the [Asserted Patents] claims are drawn to an abstract idea.”). The following analogy provides an example of how the claimed method could be performed using pen and paper.

’996 Claim 1 Method Step	Analogy
A method for providing map-related data, the method comprising:	A method for a hotel concierge to provide information to hotel customers.
[a] receiving a request for a map display illustrating information relative to one or more locations in a predetermined area;	A couple staying at a hotel ask a hotel concierge for a map showing nearby sushi restaurants.
[b] determining a status associated with at least one of the locations on the map display, the status being a function of one or more location interaction rules associated with at least one of the locations on the map display; and	The concierge considers nearby restaurants in his head and determines which to recommend, based on the rule that the couple is looking for a sushi restaurant.
[c] generating a signal to indicate on the map display the status regarding a permitted traverse or visit that is allowed under an applicable location interaction rule associated with the at least one of the locations on the map display	The concierge makes marks on a map that show where three nearby sushi restaurants are located.

The above analysis of claim 1 applies with equal force to independent apparatus claim 19 of the ’996 Patent. Claim 19 recites a “computer program product” containing “one or more instructions” for performing the method steps of claim 1. “Computer program product” and

1 similar types of claims, such as “computer-readable storage medium” claims, that parallel an
 2 abstract method claim are also abstract. *CyberSource Corp. v. Retail Decisions, Inc.*, 654 F.3d
 3 1366, 1375 (Fed. Cir. 2011) (“the basic character of a process claim drawn to an abstract idea is
 4 not changed by claiming only its performance by computers, or by claiming the process embodied
 5 in program instructions on a computer readable medium”); *see also Williamson v. Citrix Online,*
 6 *LLC*, 212 F. Supp. 3d 887, 906 (C.D. Cal. 2016) (a dependent claim reciting the method of claim
 7 1 “wherein computer instructions for performing the method steps are encoded on a computer-
 8 readable medium” added “nothing significant to the claimed abstract idea, as [it] merely
 9 specif[ies] a generic and conventional technological environment in which the invention is to be
 10 used”) *aff’d* 683 F. App’x 956 (Fed Cir. 2017); *OIP Techs., Inc. v. Amazon.com, Inc.*, No. C 12-
 11 1233-EMC, 2012 WL 3985118, at *5 n.1 (N.D. Cal. Sept. 11, 2012) (“The Court may examine
 12 the claims of the ’713 patent together despite the fact that one independent claim is a method
 13 claim and the other describes a computer-readable medium claim.”) *aff’d*, 788 F.3d 1359 (Fed.
 14 Cir. 2015).

15 Applying these precedents here, claim 19 is directed to an abstract idea because it claims a
 16 computer program containing instructions that perform a method that is substantively
 17 indistinguishable from claim 1. The only difference between claims 1 and 19 is that in claim 19
 18 the displayed “status” is the result of “user interaction rules” in addition to the “location
 19 interaction rules” that are also recited in claim 1. But as with the “location interaction rules,” the
 20 claimed “user interaction rules” can be any type of analysis of any information associated with an
 21 individual. The specification explains that the “user interaction rules” are analogous to the
 22 “location interaction rules,” but relate to analysis of information about a user instead of a
 23 location: “user interaction rules can be *any user specific rule* that applies to a user and not to a
 24 location.” ’996 Patent at 8:4-6 (emphasis added). The specification provides numerous examples
 25 that confirm that the user interaction rules encompass essentially any type of analysis of
 26 information relating to a user; according to the specification, user interaction rules can include all
 27 of the following: (1) the amount of time a user can spend at a location (*id.* at 14:5-8), (2) the
 28 number of times a user can visit a location (*id.* at 14:5-8), (3) any analysis “of the amount a user

has paid” (*id.* at 8:2-4), and (4) disallowing any interaction between a person and a location or locations (*id.* at 14:37-43). Like the “location interaction rules,” the “user interaction rules” are directed to an abstract idea because they are directed to the idea of “analyzing information.” *Elec. Power Grp.*, 830 F.3d at 1354.

2. The Asserted Independent Claims of the ’648 and ’114 Patents Are Abstract

LBS asserts two independent claims of the ’648 Patent, claims 1 and 9. Claim 1 describes “altering” a map based on one or more location interaction rules:

1. A method for a display device to receive a map through a predefined area, the method comprising:

[a] transmitting a request for the map including one or more locations, the request including an identifier associated with a user of the display device;

[b] receiving the map at the display device, the map including one or more locations, at least one location of the one or more locations associated with one or more location interaction rules verifiable via one or more monitoring devices; and

[c] interacting with the one or more monitoring devices to alter the map on the display device as a function of the one or more location interaction rules.

Claim 9 is an apparatus claim with a “computer program product” that performs the steps of claim 1 and is, therefore, functionally identical to claim 1.

Claims 1 and 9 of the ’648 Patent are directed to the same abstract idea as claim 1 of the ’996 Patent—the display of information about locations on a map. Like claim 1 of the ’996 Patent, claims 1 and 9 of the ’648 Patent recite a map that includes locations associated with “location interaction rules.” The ’648 Patent adds that these rules are “verifiable via one or more monitoring devices.”

The “monitoring devices,” as was the case with the “location interaction rules,” are simply the result of applying computer technology to an activity that humans have done for ages. The “monitoring devices” are any device that can provide information about the locations and/or users, such as the number of times a user has visited a particular location or how much time the user has spent at that location. The claim’s recitation of “monitoring devices” is simply technical

1 jargon used for claiming the abstract idea of collecting information for analysis. Again, Federal
2 Circuit precedent confirms that generic “monitoring devices” are abstract. In *Electric Power*
3 *Group*, the Federal Circuit explained that “we have treated collecting information, including
4 when limited to particular content (which does not change its character as information), as within
5 the realm of abstract ideas.” 830 F.3d at 1354 (collecting cases). The monitoring devices do
6 nothing more than collect information for analysis, and accordingly they are abstract.

7 Similarly, the addition that the location interaction rules are “verifiable” via one or more
8 monitoring devices fails to render the claims non-abstract. Neither the claims nor the
9 specification explain what it means to “verify” a rule or for a rule to be “verifiable,” and the
10 specification fails to provide or even describe an algorithm or technical solution for verifying
11 rules. As described above, a “monitoring device” can be any device that collects information.
12 Essentially any analysis of such information could be called a “rule” that is “verifiable” using the
13 “monitoring device.” Just as in *Electric Power Group*, these claims are directed to the “process
14 of gathering and analyzing information . . . then displaying the results, and not any particular
15 assertedly inventive technology for performing those functions. They are therefore directed to an
16 abstract idea.” 830 F.3d at 1354.

17 As with the ’996 Patent, LBS’s allegations help illustrate the abstract nature of claims 1
18 and 9 of the ’648 Patent. Here, LBS asserts claim 1 against Pokémon GO and alleges that the
19 location interaction rules include the “number of players required for a single or multi-person
20 gym or raid battle” and “gym affiliation and allowed user interaction.” ECF 30 ¶ 28. LBS asserts
21 that “monitoring devices” are used because “the map is altered based on raid presence, time left
22 for raid, or gym affiliation through actions taken by other users.” *Id.* LBS has also asserted claim
23 1 of the ’648 Patent against companies that provide navigation software, such as Rand McNally.
24 There, LBS asserts that the location interaction rules include “rules related to the maximum and
25 average speed of traffic” and that the “monitoring devices” are “other GPS devices.” *LBS v.*
26 *Rand McNally*, ECF 1 ¶ 71. Again, LBS’s own reading demonstrates that the claims are directed
27 to the abstract idea of displaying information on a map and can accordingly be applied to
28 displaying information about “gym battles” between Pokémon or to displaying traffic

information.

The pen-and-paper test further illustrates that claims 1 and 9 of the '648 Patent are abstract. As shown below using claim 1 as an example, these claims could be performed long before the invention of computers using pen and paper.

'648 Claim 1 Method Step	Analogy
A method for a display device to receive a map through a predefined area, the method comprising:	A method for a hotel concierge to provide information to hotel customers.
[a] transmitting a request for the map including one or more locations, the request including an identifier associated with a user of the display device;	A couple staying at a hotel ask a hotel concierge for a map showing nearby parks to which they can easily walk.
[b] receiving the map including one or more locations, at least one location of the one or more locations associated with one or more location interaction rules verifiable via one or more monitoring devices; and	The concierge provides a map to the couple showing the nearby vicinity, including several parks. Some of the parks may be within walking distance, if the weather is not bad. The concierge knows that he can verify whether a park is easy to walk to by checking the weather through his window.
[c] interacting with the one or more monitoring devices to alter the map on the display device as a function of the one or more location interaction rules.	The concierge looks out his window. He then alters the map to show which of the parks are within walking distance.

Claim 1 of the '114 Patent is essentially the same as claim 1 of the '648 Patent. The only difference is that claim 1 of the '114 Patent also recites "user interaction rules," similar to claim 19 of the '996 Patent. As already discussed in connection with the '996 Patent, the "user interaction rules," just like the location interaction rules, fail to render the claim non-abstract.

3. The Asserted Independent Claims of the '610 Patent Are Abstract

The '610 Patent discloses only system claims, of which claims 1, 7, and 8 are independent. Like the independent apparatus claims in the '996 and '648 Patents, the systems disclosed in the '610 Patent are nothing more than generic computer systems for implementing the abstract idea of displaying location information on a map using the same methods already discussed above. LBS asserts claims 7 and 8 of the '610 Patent; it does not assert independent claim 1, but it asserts claim 5 which depends from Claim 1.

Claims 7 and 8 of the '610 Patent parallel almost exactly method claim 1 of the '114 Patent and method claim 1 of the '648 Patent, respectively. The only difference is that the claims of the '610 Patent are drafted in the form of "systems" comprising "circuitry" for performing the method steps. For ease of review, the words in the '610 Patent claim that do not appear in the matching method claim of the '114 Patent or '648 Patent are bolded.

'610 Claim 7	'114 Claim 1
A system for receiving a map through a predefined area at a display device, the system comprising:	A method for a display device to receive a map through a predefined area, the method comprising:
[a] circuitry for transmitting a request for the map including one or more locations, the request including an identifier associated with a user of the display device;	[a] transmitting a request for the map including one or more locations, the request including an identifier associated with a user of the display device;
[b] circuitry for receiving the map including one or more locations, at least one location of the one or more locations associated with one or more location interaction rules verifiable via one or more monitoring devices; and	[b] receiving the map including one or more locations, at least one location of the one or more locations associated with one or more location interaction rules verifiable via one or more monitoring devices; and
[c] circuitry for interacting with the one or more monitoring devices to alter the map on the display device as a function of the one or more location interaction rules as modified by one or more user interaction rules associated with the user of the display device.	[c] interacting with the one or more monitoring devices to alter the map on the display device as a function of the one or more location interaction rules as modified by one or more user interaction rules associated with the user of the display device.

'610 Claim 8	'648 Claim 1
A system for receiving a map through a predefined area at a display device, the system comprising:	A method for a display device to receive a map through a predefined area, the method comprising:

'610 Claim 8	'648 Claim 1
[a] circuitry for transmitting a request for the map including one or more locations, the request including an identifier associated with a user of the display device;	[a] transmitting a request for the map including one or more locations, the request including an identifier associated with a user of the display device;
[b] circuitry for receiving the map including one or more locations, at least one location of the one or more locations associated with one or more location interaction rules verifiable via one or more monitoring devices; and	[b] receiving the map at the display device, the map including one or more locations, at least one location of the one or more locations associated with one or more location interaction rules verifiable via one or more monitoring devices; and
[c] circuitry for interacting with the one or more monitoring devices to alter the map on the display device as a function of the one or more location interaction rules.	[c] interacting with the one or more monitoring devices to alter the map on the display device as a function of the one or more location interaction rules.

When a system claim recites components used to perform the steps of an abstract method claim, courts have consistently found that the patentability of the system claim rises or falls with the method claim. *See Alice*, 134 S. Ct. at 2360 (invalidating system claims because “the system claims are no different from the method claims in substance”); *Accenture Global Servs. v. Guidewire Software, Inc.*, 728 F.3d 1336, 1344 (Fed. Cir. 2013) (invalidating system claim after finding method claim unpatentable because both claims “require performance of the same basic process”); *Planet Bingo, LLC v. VKGS LLC*, 576 F. App’x 1005, 1007 (Fed. Cir. 2014) (“[W]e agree with the district court that there is no meaningful distinction between the method and system claims”).

Similarly, claim 1 of the ’610 Patent parallels claim 1 of the ’996 Patent but is drafted in the form of a “computer system,” rather than a method. Here, similar language in both claims is bolded:

'610 Claim 1	'996 Claim 1
A computer system comprising:	A method for providing map-related data, the method comprising:
[a] a processor;	
[b] a memory coupled to the processor;	
[c] a receiver coupled to the processor; and	
[d] a map display module coupled to the receiver and the memory, the map display module including	[a] receiving a request for a map display illustrating information relative to one or more locations in a predetermined area;
[e] a data store configurable to hold data related to one or more interaction rules associated with one or more locations in a predefined area and one or more identifiers; and	
[f] a status module configurable to determine a status associated with at least one of the one or more locations on the map, the status being a function of one or more location interaction rules associated with the at least one of the locations.	[b] determining a status associated with at least one of the locations on the map display, the status being a function of one or more location interaction rules associated with at least one of the locations on the map display; and
	[c] generating a signal to indicate on the map display the status regarding a permitted traverse or visit that is allowed under an applicable location interaction rule associated with the at least one of the locations on the map display

Claim 1 of the '610 Patent is abstract for the same reasons that claim 1 of the '996 Patent is abstract: the claim is directed to the idea of determining any information (i.e., a "status") about a location based on undefined analysis (i.e., based on a "location interaction rule") for display on a map. Claim 1 of the '610 Patent also recites generic computer components: a processor, a memory, a receiver, a display, and a data store. Reciting generic computer components, however,

1 is not sufficient to render a claim non-abstract. *Elec. Power Grp.*, 830 F.3d at 1355.

2 4. The Asserted Patents Preempt the Field

3 Further evidence that the Asserted Patents are not patent eligible comes from their
4 breadth. The asserted claims are so abstract that they would preempt the field of displaying
5 information on a map. *Twilio*, 2017 WL 1374759, at *11 (“[I]f a claim is so abstract so as to
6 ‘pre-empt use of [the claimed] approach in all fields, and would effectively grant a monopoly
7 over an abstract idea,’ it is not patent eligible.”) (quoting *Bilski v. Kappos*, 561 U.S. 593, 612
8 (2010)). The Asserted Patents purport to claim any and all ways of displaying on a map
9 information about locations on that map, and hence they would preempt essentially the entire
10 field of displaying information on maps. LBS’s own actions reinforce this point: LBS has
11 accused of infringing the display of essentially any information—ranging all the way from
12 information about a fictional game world, such as information about the presence of a Pokémon
13 or a battle between two Pokémon, to information about the real world, such as information about
14 traffic conditions and road closures. Because the Asserted Patents would preempt the display of
15 any information on a map and grant LBS a monopoly over that entire idea, they are not patent
16 eligible.

17 B. The Asserted Patents Do Not Disclose an “Inventive Concept”

18 The Asserted Patents are not saved by the second step of the *Alice* framework because
19 they do not disclose an inventive concept that would overcome their abstractness. Reciting
20 computer elements is deemed meaningful in the context of this analysis only when they involve
21 more than performance of “well-understood, routine, [and] conventional activities previously
22 known to the industry.” *Content Extraction & Transmission LLC v. Wells Fargo Bank, NA*, 776
23 F.3d 1343, 1347-48 (Fed. Cir. 2014) (quoting *Mayo*, 566 U.S. at 73). The Federal Circuit has
24 “repeatedly held” that the invocation of “off-the-shelf, conventional computer, network, and
25 display technology” is “not even arguably inventive.” *Elec. Power Grp.*, 830 F.3d at 1355. In
26 other words, calling “for performance of the claimed information collection, analysis, and display
27 functions ‘on a set of generic computer components’ and display devices” is insufficient to supply
28

1 an inventive concept. *Id.* (quoting *Bascom Global Internet Servs., Inc. v. AT&T Mobility LLC*,
 2 827 F.3d 1341, 1350 (Fed. Cir. 2016)). In *Symantec*, for example, the Federal Circuit found no
 3 inventive concept in the claims of three patents directed to computer security because the claims
 4 merely “use generic computers to perform generic computer functions”—such as “computer
 5 network,” sending and receiving email, and a “database of business rules.” 838 F.3d at 1315-17.

6 The asserted claims here do not add an inventive concept. The asserted claims recite, at
 7 most, only generic components of generic computer systems, such as “display devices,”
 8 “monitoring devices,” “circuitry,” and a “processor,” performing their standard, conventional
 9 functions to implement the claimed abstract idea. These are all the type of “off-the-shelf,
 10 conventional computer, network, and display technology” that the Federal Circuit has held is “not
 11 even arguably inventive.” *Elec. Power Grp.*, 830 F.3d at 1355. “Instructing one to ‘apply’ an
 12 abstract idea and reciting no more than generic computer elements performing generic computer
 13 tasks does not make an abstract idea patent-eligible.” *Intellectual Ventures I LLC v. Capital One*
 14 *Bank (NA)*, 792 F.3d 1363, 1368 (Fed. Cir. 2015). In *Symantec*, the Federal Circuit explained that
 15 an inventive concept could include an “improved, particularized method of digital data
 16 compression” or an improvement to “the way a computer stores and retrieves data in memory.”
 17 838 F.3d at 1315. The claims here provide no such improvement on existing computer
 18 technology. Rather, the claims here describe standard computer functions such as “receiving,”
 19 “determining,” and outputting. These “generic computer functions” are ineligible for patent
 20 protection. *Id.*

21 Indeed, numerous courts have held that patents directed to the use of conventional
 22 computer equipment to display information on maps are not inventive. *See Move, Inc.*, 221 F.
 23 Supp. 3d at 1165 (“[i]t appears to us that the ’989 Patent provides instructions to implement an
 24 abstract idea with routine, conventional computing activity.”) (quotation omitted); *Peschke*, 168
 25 F. Supp. 3d at 890 (“application of the abstract idea does not make the computerized mapping
 26 system patent-eligible”); *Encyclopaedia Britannica*, 128 F. Supp. 3d at 114 (“using ‘indicators’ to
 27 show the position of a place on a map and indicate the availability of further information about
 28 the place is not an inventive concept”); *Concaten*, 131 F. Supp. 3d at 1176 (“[t]he [asserted

1 patent] does not claim any improvement in the technology required to implement its steps of data
 2 collection and transmission.”). The Asserted Patents likewise fail to provide an inventive
 3 concept.

4 Furthermore, in determining whether a computer-implemented patent imparts an
 5 innovative concept, the Federal Circuit often looks to whether the “claimed solution is necessarily
 6 rooted in computer technology in order to overcome a problem specifically arising in the realm
 7 of” computers. *DDR Holdings, LLC v. Hotels.com, L.P.*, 773 F.3d 1245, 1257 (Fed. Cir. 2014).
 8 For example, in *DDR Holdings*, the patent specification identified a specific problem with prior
 9 art web-page systems and disclosed a solution to this problem. *Id.* at 1248. The Federal Circuit
 10 found that the claims “recite[d] a specific way” to solve this problem and thus held that the
 11 “claimed solution amounts to an inventive concept for resolving this particular Internet-centric
 12 problem.” *Id.* at 1259.

13 Here, however, the Asserted Patents do not provide an inventive solution for solving a
 14 particular problem arising in the realm of computer-based map technology. To the contrary, the
 15 Asserted Patents’ shared specification neither identifies any problem with the pre-existing
 16 technology nor explains what is purportedly innovative about the claimed inventions. Like the
 17 patent at issue in *Versata Development Group, Inc. v. SAP Am., Inc.*, the Asserted Patents “do not
 18 improve some existing technological process or solve some technological problem in
 19 conventional industry practice.” 793 F.3d 1306, 1334 (Fed. Cir. 2015). Rather, the claims recite
 20 a “commonplace” method “being applied on a general purpose computer.” *Id.* Accordingly, the
 21 Asserted Patents are not inventive.

22 **C. The Asserted Dependent Claims Are Abstract and Lack Any “Inventive**
 23 **Concept”**

24 The asserted dependent claims of the Asserted Patents do not change the abstract nature of
 25 the claims or disclose an inventive concept. Therefore, these dependent claims are likewise
 26 patent ineligible:

- 27 • ’996 Patent, claim 2, 22; ’648 Patent, claim 4; ’610 Patent, claim 11: Each of these
 28 claims adds the step of “periodically updating the status.” This does not change the
 abstract nature of the claims. The claims remain directed to displaying information

about locations on a map; the displayed information is merely updated on a periodic basis. Moreover, this addition does not disclose an inventive concept because updating is a routine, well-understood activity for general purpose computers. *Alice*, 134 S. Ct. 2359 (“[t]he same is true with respect to the use of a computer to obtain data, adjust account balances, and issue automated instructions; all of these computer functions are ‘well-understood, routine, conventional activit[ies]’ previously known in the industry”).

- ’996 Patent, claims 3, 5; ’648 Patent, claim 15; ’610 Patent, claim 26: Each of these claims discusses using a monitoring device to collect information. As explained above in connection with claim 1 of the ’648 Patent, using “monitoring devices” to collect information for analysis is abstract.
- ’996 Patent, claims 7, 24; ’684 Patent, claim 15: These claims add the use of undefined “user interaction rules.” As described above in connection with claim 19 of the ’996 Patent, reciting undefined rules does not render the claims patent-eligible, because such rules are merely directed to the abstract idea of analyzing information.
- ’996 Patent, claims 12, 23; ’648 Patent, claims 6, 7, 13, 14; ’114 Patent, claims 4, 5; ’610 Patent, claim 5, 13, 14, 21: Each of these claims recites the use of generic network technology, such as using a wireless network or Bluetooth connection (’996 Patent, claim 12) or “instructions for wirelessly transmitting [a] request to a server over a network” (’648 Patent, claim 13). Using existing network technologies does not change that these claims are directed to the abstract idea of displaying information about locations on a map—that the information may be received over a network does not render the claims patent-eligible. Nor does using generic network technology disclose an inventive concept. “[T]wo computers communicating over a network is not inventive.” *Rothschild Location Technologies v. Geotab USA, Inc.*, No. 6:15-cv-682, 2016 WL 3584195, at *7 (E.D. Tex. Jan. 4, 2016).
- ’996 Patent, claims 8, 9, 25, 28; ’648 Patent, claims 2, 3, 11; ’114 Patent, claims 6, 7, 13, 17; ’610 Patent, claims 9, 10, 18, 26: Each of these claims recites, at most, a minor variation on the asserted independent claims. For some of these claims, it is not clear whether the claim adds anything at all to the independent claim. For example, claim 28 of the ’996 Patent recites “instructions” for “illustrating location detail” for a location. It is not clear what, if anything, this adds to claim 19 of the ’996 Patent. Other claims specify minor variations. For example, claim 13 of the ’996 Patent recites that the “status” is displayed by obfuscating a location on a map. And, finally, other claims recite particular types of interaction rules. For example, claim 8 of the ’996 Patent recites rules limiting the visits to a location by time or number of visits. None of these minor variations changes the abstract nature of the asserted claims or discloses an inventive concept.

V. CONCLUSION

All of the Asserted Patents are directed to patent-ineligible subject matter. They fail *Alice* step 1 because they are directed to the abstract idea of displaying information about locations on a

1 map. And they fail Alice step 2 because they do not disclose an inventive concept. Accordingly,
2 Niantic respectfully requests that the Court find the asserted claims of the '996, '648, '114, and
3 '610 Patents invalid under 35 U.S.C. § 101 and dismiss LBS's litigation with prejudice.

4
5 September 19, 2017

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